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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/505,501	02/17/2000	William L. O'Meara	102001-200	7115

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WIGGIN & DANA LLP
ATTENTION: PATENT DOCKETING
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NEW HAVEN, CT 06508-1832

[REDACTED] EXAMINER

FELTON, AILEEN BAKER

[REDACTED] ART UNIT

[REDACTED] PAPER NUMBER

3641

DATE MAILED: 03/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

SK

Office Action Summary	Application No. 09/505,501	Applicant(s) O'Meara et al
	Examiner Aileen Felton	Art Unit 3641



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on Feb 21, 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-7 and 19-24 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-7 and 19-24 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) The translation of the foreign language provisional application has been received.

- 15) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____	6) <input type="checkbox"/> Other: _____

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DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 20 and 23 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no basis in the specification for the addition of the word “oval”.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 20 and 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 20 and 23 currently recite “oval”, it is unclear what shape Applicant intends since there are no oval shapes shown in the drawings.

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Drawings

5. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the oval shape must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-7 and 19-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Olsen(2,292,469) in view of Jacobson(4,094,248) and Smith et al(5,682,013).

Olsen discloses a propellant composition that comprises nitrocellulose, nitroglycerin, diphenylamine, and dibutylphthalate. The composition can obtain a lower viscosity through the use of an increased amount of solvent. The composition may be extruded through dies to form a perforated cylindrical grain or further changed into any desired form. The specific amounts of the ingredients and the particular shape are not disclosed.

Jacobson and Smith et al teach two propellant shapes. Jacobson teaches a shape with external grooves and Smith teaches one with a cylindrical shape.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the composition of Olsen into the shapes taught by Jacobson and

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Smith et al since it is suggested by Olsen that the propellant can be formed into any shape. It is well-settled that optimizing a result effective variable is well within the expected ability of a person of ordinary skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980), *In re Aller*, 220 F.2d 454, 105 USPQ 233 (CCPA 1955).

Response to Arguments

8. Applicant's arguments filed 2/21/2003 have been fully considered but they are not persuasive. Applicant argues that Olsen is not a lacquer, however in page 2, lines 24-30, the disclosure indicates that it is a lacquer composition. The percents are not shown in the disclosure but ratios of solvent to nitrocellulose are shown in page 3, lines 4-17. The viscosity is also shown on page 2, lines 33-37. Olsen clearly discloses that the viscosity can be varied to suit many purposes by merely altering the amount of solvent used. Further, the viscosity is considered an inherent property of the composition of Olsen. As to limitations which are considered to be inherent in a reference, note the case law of *In re Ludke*, 169 USPQ 563; *In re Swinehart*, 169 USPQ 226, *In re Fitzgerald*, 205 USPQ 594; *In re Best et al*, 195 USPQ 430; and *In re Brown*, 173 USPQ 685, 688. Olsen also discloses that the lacquer composition can be extruded through dies to create a perforated pellet on page 4, lines 22-32. Jacobson and Smith et al are used to merely teach different shapes of pellets that can be formed and are not intended to show any of the composition of the instant invention. Also, Olsen discloses that any usual stabilizer can be used and includes diphenylamine. It would be obvious to one of ordinary skill to determine the amount of stabilizer needed and also since no amount is disclosed there is no

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way to know that it isn't the same amount that is claimed by Applicant. Regarding the drawings, it is still unclear why Applicant is using the word "oval" and also why Applicant refers to figures 4B and 5B when there are no figures of those numbers present in the application.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

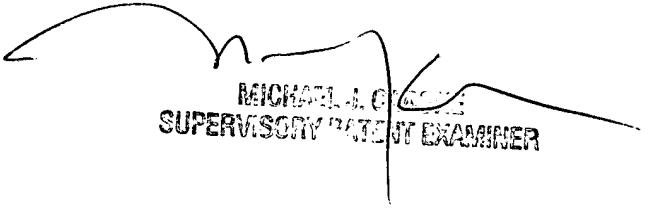
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aileen Felton whose telephone number is (703) 306-5751. The examiner can normally be reached on Monday through Friday from 6:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone, can be reached on (703) 306-4198. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.



MICHAEL J. CARONE
SUPERVISORY PATENT EXAMINER